

MINUTE ENTRY
FALLON, J.
September 28, 2001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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| | : | MDL NO. 1355 |
| IN RE: PROPULSID | : | |
| PRODUCTS LIABILITY LITIGATION | : | SECTION "L" |
| | : | |
| | : | JUDGE FALLON |
| | : | JUDGE AFRICK |

THIS DOCUMENT RELATES TO ALL CASES:

A pretrial status conference was held September 28, 2001 at 9:30 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Richard Arsenault, Stephen Murray, Sr., Lynn Swanson, Dawn Barrios, Carlos Prietto, Barry Hill, Bob Wright, Larry Morris, James Dugan, Chris Seeger, Walter Dumas, and Julie Jacobs. In attendance for Defendants were James Irwin, Thomas Champion, Susan Sharko, Quentin Urquhart, Jr., Charles Preuss, Miriam McMichael, Kim Meaders, Michelle Plaunche, Ingrid Cruz, Lori Moser, Ronald Ronzello, Guice Giambrone. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 10 of Plaintiffs' and Defendants' Liaison Counsel.

1. Master Complaint/Answer

Plaintiffs' Liaison Counsel (PLC) requested and the Court granted a one week delay to file the Master Complaint. Counsel will explore the potential of regional putative class actions on some issues. Counsel reports that there are now thirty (30) class actions in this proceeding.

2. Update to Rolling Document Production and Electronic Document Production

Liaison Counsel informed the Court that Defendants have thus far delivered three of eight databases. Plaintiffs and defendants are meeting next week to reevaluate whether all databases are needed. Defendants advised the Court that the domestic discovery production is essentially complete and that the Belgium production is underway. To date 130,000 pages of documents from Belgium have been delivered in CD format. PLC informed the Court that it intends to bring to the defendants a sequencing request on foreign production so that foreign discovery can be accelerated. The Court advised the parties to be mindful that discovery material relevant to class certification should be prioritized.

Regarding the nomination of a Special Master as required by Section H-3 of PTO-10, the parties indicated that no agreement has yet been reached as to whom should be appointed. The Court mentioned several options including a tutorial session conducted by experts for plaintiff and defendants for the benefit of the Court or an independent expert appointed to assist the Court.

3. Electronic Service/Verilaw

The parties informed the Court that the additional security measures have been implemented.

4. State Liaison Counsel

Defense Liaison Counsel (DLC) registered strong concerns about the potential duplicitous discovery arising from the New Jersey putative class action, in particular the recent notice of 38 proposed depositions of past and present employees of the Janssen American and Belgium companies as well as of Johnson & Johnson over a 54 day period. DLC informed the Court that defendant anticipates filing with this Court a motion to enjoin further discovery in the New Jersey putative class

action. The Court noted the seriousness of this situation and indicated that all interested parties will have an opportunity to voice arguments for and against any requested injunction.

5. Plaintiff Profile Forms and Authorizations

DLC informed the Court that as of September 26, 2001, defendants have received 775 Patient Profile Forms (PPFs). There are 199 currently overdue and three (3) will become due within the next thirty (30) days. DLC expects to file for the dismissal of several plaintiffs who have failed to respond to numerous requests for completion of PPFs, including but not limited to the claims of plaintiffs, Jason Link, Patty Absheir, Hugh Ford, Irvin Leitz, and Gladys Rodriguez. DLC also informed that some of the PPFs received have been delivered with unsigned medical authorizations.

6. Subpoena to FDA

Documents responsive to the subpoena have been produced by the FDA and delivered to defense counsel. Plaintiffs have not yet received the FDA documents. DLC informed that they are in the process of redacting those documents and preparing a redacting code, and that they will be turned over to plaintiffs shortly.

7. Service List of Attorneys

The Court ordered the revision of a list of attorneys including those serving as counsel in both the MDL and state court proceedings.

8. Ongoing Studies

Plaintiff indicated that the subpoena on BevGlen was served but there has not yet been full production. The Court noted that there may be some privacy issues but that the Court will enforce the subpoena. The Court noted that one way BevGlen might deal with the privacy issue is to turn over the

information to the defendants. DLC informed the Court that it has offered the assistance of counsel to BevGlen.

The Court ordered that PLC provide to the Court the names of the president and chairman of the board of BevGlen. The Court further ordered that it be informed within ten (10) days whether BevGlen has complied with the subpoena.

9. Third Party Subpoena Duces Tecum Issued by PSC

PLC addressed concerns about the defendant's practice of reviewing and screening documents before they are produced from a third party. PLC also expressed concern that plaintiffs get a certification from the third party who had custody and control of those documents of exactly what they produced to the defendants, with Bates numbers, along with the documents and the redaction log.

10. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification

The Court set March 22, 2002 as the class certification date. Liaison counsel should meet to agree upon a scheduling order for this certification hearing. If the parties are unable to reach an agreement, the Court will establish a schedule order containing various cut-off dates

11. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On May 22, 2001 defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. One: Ongoing Studies. On July 9, 2001, counsel representing the plaintiffs filed a response. Since then DLC has received numerous responses submitted by counsel for individual plaintiffs; however, there remain approximately 25 counsel from whom DLC has not received a response. For these parties, DLC held a Local Rule 37.1 and Pretrial Order No. 2, Paragraph VIII(a), telephone conference on Monday, September 17, 2001 at which DLC gave the parties an

additional two weeks, until October 1, 2001, to respond to the discovery. After such time DLC will file the appropriate Motions to Compel for the parties who fail to respond.

PLC is currently in the process of preparing responses to the Request for Production of Documents Propounded to Plaintiffs - Set No. 2 by defendants.

12. Modification of Pre-Trial Order No. 9

The parties submitted a motion providing for modification of Pre-Trial Order No. 9, Paragraph 9 to all defendants to provide notice of receipt of medical records to plaintiffs' counsel of record every thirty (30) days by uploading same to Verilaw by name or by depositing the same in the U.S. Mail.

13. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, October 25, 2001 at 9:00 a.m.